

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF SOUTH CAROLINA  
FLORENCE DIVISION

STANLEY TROY SMITH,	)	C.A. No. 4:05-830-TLW
	)	
Petitioner,	)	
	)	
vs.	)	<b>WRITTEN OPINION AND ORDER</b>
	)	
STATE OF SOUTH CAROLINA; AND	)	
HENRY MCMASTER, ATTORNEY	)	
GENERAL OF THE STATE OF SOUTH	)	
CAROLINA,	)	
	)	
Respondents.	)	
	)	
	)	

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In this *pro se* case, the petitioner, an inmate of the South Carolina Department of Corrections serving a sentence of life plus 40 years after pleading guilty to murder, armed robbery, use of a knife during the commission of violent crime, and grand larceny of a motor vehicle, has filed a petition for writ of habeas corpus pursuant to 28 U.S.C. § 2254. In his petition, the petitioner alleges that: (i) his attorney failed to file a notice of appeal and did not inform him of his right to appeal; (ii) the Solicitor was going to pursue the death penalty if he did not plead guilty; and (iii) the indictment was insufficient to confer jurisdiction upon the Court.

This matter now comes before the undersigned for review of the June 27, 2005, Report and Recommendation (“the Report”) filed by Magistrate Judge Thomas E. Rogers, III. In his Report, Magistrate Judge Rogers recommends that the instant petition for habeas corpus be dismissed, without prejudice and without requiring the respondents to file a return.

As reasoned by the Magistrate Judge:

...it is clear that the petitioner has not exhausted his state remedies..

Since the petitioner has yet to exhaust a viable state court remedy—an application for post-conviction relief, this court should not keep this case on its docket...

The petitioner has not filed any objections to the Report.

This Court is charged with conducting a *de novo* review of any portion of the Magistrate Judge's Report to which a specific objection is registered, and may accept, reject, or modify, in whole or in part, the recommendations contained in that report. 28 U.S.C. § 636. As noted above, no objections have been filed to the Report. In the absence of objections to the Report and Recommendation of the Magistrate Judge, this Court is not required to give any explanation for adopting the recommendation. *See Camby v. Davis*, 718 F.2d 198, 199 (4<sup>th</sup> Cir. 1983).

A *de novo* review of the record indicates that the Report accurately summarizes this case and the applicable law. For the reasons articulated by the Magistrate Judge, it is **ORDERED** that the instant habeas corpus petition be dismissed, without prejudice and without requiring the respondents to file a return.

**IT IS SO ORDERED.**

s/ Terry L. Wooten  
Terry L. Wooten  
United States District Court Judge

July 26, 2005  
Florence, South Carolina